

BILL ANALYSIS

Senate Research Center

H.B. 2438
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Business & Commerce
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 2438 updates Chapter 1201, Occupations Code. The Texas Manufactured Housing Act was originally created by the Texas Legislature in the mid-1970s and codified into the Occupations Code in 2003. During this time the industry has experienced significant change along with amendments to both the Texas Act and the pre-emptive Federal Manufactured Housing Standards Act.

H.B. 2438 updates language to reflect current industry trends, delete language that is no longer applicable, reference federal mandates, preserve consumer protections, and increase continuing education requirements.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Housing and Community Affairs is modified in SECTION 9 (Section 1201.163, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1201.101(f), Occupations Code, to prohibit a person from acting as a salesperson of manufactured housing unless the person holds a salesperson's license, rather than is a license holder. Prohibits a licensed salesperson from participating in a sale of a manufactured home unless the sale is through the retailer who sponsored the salesperson's application as required by Section 1201.103(d).

SECTION 2. Amends Section 1201.103(d), Occupations Code, to require an applicant for a salesperson's license to file with the director an application that is sponsored by a licensed, bonded retailer. Makes nonsubstantive changes.

SECTION 3. Amends Section 1201.106(a), Occupations Code, to require an applicant for a license or a license holder to file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the amount of \$50,000, rather than \$20,000, for a broker.

SECTION 4. Amends Section 1201.107, Occupations Code, by adding Subsection (d), to require a retailer or broker, if a retailer or broker offers for sale or participates in any way in the sale of a manufactured home at a location other than an undivided parcel of real property where more than one manufactured home is located and offered for sale, exchange, or lease-purchase by a retailer or broker to the public, to take certain actions.

SECTION 5. Amends Sections 1201.113(a), (b), (e), and (g), Occupations Code, as follows:

(a) Makes a conforming change.

(b) Makes a conforming change.

(e) Requires a salesperson to complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is issued. Requires a salesperson regulated under this chapter, to renew a license under this chapter, to complete an additional eight hours of certification and continuing education programs for each renewal, rather than each year. Requires the programs to be presented by a Manufactured Housing Board of the Texas Department of Housing and Community Affairs-approved (board) organization or educational institution and to include instruction in applicable state and federal law, consumer protection regulations, and ethical standard, rather than to address state and federal law applicable to all manufactured housing retailer practices and relevant consumer protections regulations and ethical standards. Makes conforming changes.

(g) Makes conforming changes.

SECTION 6. Amends Section 1201.114(a), Occupations Code, to provide that a manufacturer's, retailer's, broker's, or installer's license is valid for one year and that a salesperson's license is valid for two years. Prohibits a person whose license has been suspended or revoked or whose license has expired from engaging in activities that require a license until the license has been reinstated or renewed.

SECTION 7. Amends Section 1201.151(d), Occupations Code, to provide that this section does not apply to money stated to be a down payment in an executed retail, rather than retail installment, sales contract.

SECTION 8. Amends Section 1201.159(a), Occupations Code, to require a broker to ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer. Deletes existing text authorizing a broker to be the agent of party involved in certain transactions involving a manufactured home.

SECTION 9. Amends Sections 1201.163(a) and (b), Occupations Code, as follows:

(a) Requires the Texas Department of Housing and Community Affairs (department) to adopt rules creating a one-page form printed in at least 12-point type that addresses consumer protection disclosures required in chattel mortgage transactions. Prohibits a consumer protection disclosure statement under this subsection from containing any blank lines and requires the statement to contain only, rather than to include, certain information. Amends the specific information which must be contained on the statement.

(b) Requires a retailer to provide the consumer protection disclosure statement to the consumer before the completion of the first credit application, rather than at least 24 hours before the installment contract is fully executed, as provided by Section 1201.164.

SECTION 10. Amends Section 1201.164(a), Occupations Code, to authorize the retailer, if the consumer has not accepted an offer within 72 hours after the delivery of the contract, to withdraw the offer. Makes conforming changes.

SECTION 11. Amends Section 1201.2055, Occupations Code, by amending Subsection (d) and adding Subsections (e), (f), (g), and (h), as follows:

(d) Requires the department, if an owner elects to treat a manufactured home as real property, rather than if the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as real property, to issue to the owner a certified copy of the statement of ownership and location that on its face reflects that the owner has elected to treat the manufactured home as real property at the location listed on the statement. Requires the owner, not later than the 60th day after the date the department issues a certified copy of the statement of ownership and location to the owner, to file the certified copy in the real property records of the county in which the home is located and notify the department and the tax assessor-collector that the certified copy has been filed.

(e) Creates this subsection from text of existing Subsection (d). Provides that a manufactured home is not considered to be real property until the department and the tax assessor-collector have been notified of the filing as provided by Subsection (d).

(f) Requires the department and the tax assessor-collector, if they are notified under Subsection (d), to note, in a timely manner, in their records that a real property election has been perfected. Requires the department and the tax assessor-collector, if they are not notified as described by Subsection (d), to note in their records that a real property election has not been perfected and that the home remains personal property. Deletes existing text relating to the real property records of the county in which the home is located.

(g) Creates this subsection from text of existing Subsection (d). Provides that, after the department and the tax assessor-collector note in their records that a real property election has been perfected, rather than after the certified copy has been filed in the real property records of the county, the home is considered to be real property for all purposes, rather than in the form of an improvement to the underlying real property on which the home is located. Deletes existing text relating to the filing of the certified copy.

(h) Provides that the provisions of this chapter relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a home regardless of whether the home is considered to be real or personal property.

SECTION 12. Amends Section 1201.206(d), Occupations Code, to require the seller or transferor, rather than the purchaser or transferee, not later than the 30th day after the date of each subsequent sale or transfer of a home that is considered to be personal property, to provide to the department a completed application for the issuance of a new statement of ownership and location. Makes nonsubstantive changes.

SECTION 13. Amends Section 1201.207(a), Occupations Code, to require the department to process any completed application for the issuance of a statement of ownership and location not later than the 15th, rather than 10th, working day after the date the application is received by the department.

SECTION 14. Amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.2076, as follows:

Sec. 1201.2076. **CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY.** Prohibits the department from issuing a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and each lien, including a tax lien, on the home is released by the lienholder, or each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

SECTION 15. Amends Section 1201.209, Occupations Code, to delete existing text prohibiting the department from refusing to issue a statement of ownership and location and from suspending or revoking a statement of ownership and location unless a local tax lien was filed before September 1, 2001, and recorded under Section 32.015 (Tax Lien on Manufactured Home), Tax Code, as that section existed on the date the lien was filed, and the lien has not been extinguished.

SECTION 16. Amends Sections 1201.216(a) and (b), Occupations Code, as follows:

(a) Requires the department, if the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, to indicate certain information on the statement of ownership and location for the home, rather than the manufactured home. Amends the specific information which is required to be indicated on the statement.

(b) Requires, rather than authorizes, the department, on application and subject to Sections 1201.2076 and 1201.209, to issue for the structure described in the application a new statement of ownership and location restoring the structure's designation as a manufactured home only after an inspection and determination that the structure, rather than home, is habitable as provide by Section 1201.453. Deletes existing text requiring the statement to indicate that the home is no longer reserved for business use.

SECTION 17. Amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.217, as follows:

Sec. 1201.217. MANUFACTURED HOME ABANDONED. (a) Authorizes the owner of real property on which a manufactured home owned by another is located to declare the home abandoned as provided by this section if the home has been continuously unoccupied for at least four months and any indebtedness secured by the manufactured home is also delinquent.

(b) Requires the owner of real property on which a manufactured home is located, before declaring the home abandoned, to send a notice of intent to declare the home abandoned to the owner of the home and all lienholders at the addresses listed on the home's statement of ownership and location on file with the department. Provides that mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) Authorizes the owner of the home or a lienholder, on receipt of a notice of intent to declare a manufactured home abandoned, to enter the real property on which the home is located to remove the home.

(d) Provides that, if the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked, all liens on the home are extinguished and the real property owner may declare the home abandoned and may apply to the department for a statement of ownership and location listing the real property owner as the owner of the manufactured home.

(e) Provides that a new statement of ownership and location issued by the department under this section transfers, free of any liens, title to the manufactured home to the real property owner, if there is evidence of United States Postal Service return receipt from all lienholders.

SECTION 18. Amends Section 1201.219(b), Occupations Code, to provide that, except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department.

SECTION 19. Amends Section 1201.221(a), Occupations Code, to require the department, on written request, to provide information held by the department on the current location of a manufactured home and the existence of all tax liens, rather than any tax lien, on that home for which notice has been filed with the department.

SECTION 20. Amends Sections 1201.352(c) and (d), Occupations Code, as follows:

(c) Deletes existing text requiring the retailer, before the signing of a binding retail installment sales contract or other binding purchase agreement, to give the consumer a general description of the retailer's warranty.

(d) Deletes existing text requiring the retailer, at the time of the initial installation at the consumer's homesite, to deliver to the consumer the manufacturer's warranty.

SECTION 21. Amends Section 1201.357, Occupations Code, by adding Subsection (c), to require the manufacturer or retailer, if the manufacturer or retailer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, to make that allegation in the written statement required by Subsection (a). Requires the department to investigate the allegation, and if the department determines that the allegation is credible, to issue a new order specifying the date and time of the proposed corrective action. Requires the department to send the order to the consumer and the manufacturer or retailer, as applicable, by a specific method. Provides that, if the consumer refuses to comply with the department's new order, the manufacturer or retailer, as applicable, is discharged from the obligations imposed by the relevant department orders, has no liability to the consumer, and is not subject to an action by the department for failure to provide a warranty service.

SECTION 22. Amends Section 1201.361, Occupations Code, to require the warranty to conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Provides that, unless the warranty provides for a longer period, the installer has no obligation or liability for any defect described in a written notice received from the consumer more than two years after the date of the installation.

SECTION 23. Amends Section 1201.405, Occupations Code, by adding Subsection (e), to require the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs (director), in determining the amount of actual damages under this section, to make an independent inquiry as to the damages actually incurred, unless the damages have been established by a contested jury trial.

SECTION 24. Amends Section 1201.451(a), Occupations Code, to delete existing exceptions to this section if a sale, exchange, or lease-purchase is to a purchaser for the purchaser's business use or a rebuilder for the purpose of rebuilding a salvaged manufactured home.

SECTION 25. Amends Section 1201.452(b), Occupations Code, to require a person, if the home does not have the appropriate seal or label, to submit to the department a copy of any written disclosure required under Section 1201.455(a).

SECTION 26. Amends Section 1201.455, Occupations Code, as follows:

Sec. 1201.455. New heading: WRITTEN DISCLOSURE AND WARRANTY OF HABITABILITY REQUIRED. Prohibits a person, except as otherwise provided by this subchapter, from selling, exchanging, or lease-purchasing a used manufactured home to a consumer for use as a dwelling without providing a written disclosure of a certain length describing the conditions of the home and of any appliances that are included in the home and a written warranty that the home is and will remain habitable until the 60th day after the later of the installation date or the date of the purchase agreement. Provides that, unless, not later than the 65th, rather than 60th, day after the later of the installation date, the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated.

SECTION 27. Amends the heading to Section 1201.457, Occupations Code, to read as follows:

Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM BUSINESS USE OR SALVAGE.

SECTION 28. Amends Section 1201.457(b), Occupations Code, to prohibit the purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home from selling, exchanging, or lease-purchasing the home for use as a dwelling or knowingly allowing any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage.

SECTION 29. Amends Subchapter Z, Chapter 2306, Government Code, by adding Section 2306.591, as follows:

Sec. 2306.591. MANUFACTURED HOMES INSTALLED IN COLONIAS. Sets forth specific requirements for a manufactured home to be approved for installation and use as a dwelling in a colonia. Provides that an owner of a manufactured home is not eligible to participate in a grant loan program offered by the department, including the single-family mortgage revenue bond program under Section 2306.142, unless the owner complies with the requirements of this section.

SECTION 30. Amends Section 1.04, Tax Code, by adding Subdivision (3-a), to provide that, notwithstanding anything contained herein to the contrary, a manufactured home is an improvement to real property only if the owner of the home has elected to treat the manufactured home as real property pursuant to Section 1201.2055 (Election by Owner), Occupations Code, and a certified copy of the statement of ownership and location has been filed with the real property records of the county in which the home is located as provided by Section 1201.2055(d), Occupations Code.

SECTION 31. Amends Section 32.014, Tax Code, as follows:

Sec. 32.014. TAX LIEN ON MANUFACTURED HOME. Requires the tax lien, if the owner of a manufactured home has elected to treat the home as real property, rather than if the manufactured home is listed together with the land on which the manufactured home is located, to be attached to the land on which the manufactured home is located. Provides that, if the owner of a manufactured home does not elect to treat the home as real property with, rather than if the manufactured home is listed separately from, the land on which the manufactured home is located, the tax lien on the manufactured home does not attach to the land on which the home is located. Deletes existing text relating to the jurisdiction of a taxing unit if a manufactured home is listed together with the land on which it is located.

SECTION 32. Amends Section 32.015(a), Tax Code, to delete existing text relating to a valid tax lien filed before September 1, 2001.

SECTION 33. Amends Section 32.03, Tax Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2), as follows:

(a) Prohibits a tax lien, except as provided by Subsection (a-1), from being enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have an actual notice of the existence of the lien. Deletes existing text providing an exception if the personal property is a manufactured home.

(a-1) Prohibits a tax lien against a manufactured home from being enforced unless it has been recorded with the department as provided by Section 1201.219,

Occupations Code, before October 1, 2005, or not later than six months after the end of the year for which the tax was owed.

(a-2) Prohibits a person from transferring title of a manufactured home until all tax liens perfected on the home have been extinguished or satisfied and released. Provides that this subsection does not apply to the sale of a manufactured home in inventory.

(b) Provides that a bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location, rather than document of title, is not required to pay any taxes that have not been recorded with the department, rather than any taxes imposed in a tax year that begins on or before January 1, 2001, or penalties or interest on those taxes, with certain exceptions.

SECTION 34. Repealer: (1) Sections 1201.164(b) (Advance Copy of Installment Contract and Disclosure Statements; Offer by Retailer), 1201.165 (Nonbinding Estimate), 1201.206(a) (Application for Issuance of Statement of Ownership and Location), 1201.215 (Previous Owner or Lienholder Unavailable), 1201.216(c) and (d) (Change in Use), 1201.219(d) (Perfection and Effect of Liens), and 1201.222(b) (Certain Manufactured Homes Considered Real Property), Occupations Code;

(2) Sections 32.03 (c)-(j) (Restrictions on Personal Property Tax Lien), Tax Code;

(3) Section 623.093(d) (Contents of Application and Permit), Transportation Code.

SECTION 35. Requires the department, not later than November 1, 2005, to prepare and make available to the public the disclosure form required by Section 1201.455(a), Occupations Code, as amended by this Act.

SECTION 36. Effective date: upon passage or September 1, 2005.